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No. 352

In the Supreme Court of the United States

OCTOBER TERM, 1929

GEMCO MANUFACTURING COMPANY, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINION BELOW

The memorandum opinion of the Court of Claims (R. 9) is not yet reported.

JURISDICTION

The judgment sought to be reviewed was entered March 11, 1929. (R. 9, 10.) Motion for a new trial was overruled June 10, 1929. (R. 10.) Petition for a writ of certiorari was filed August 29, 1929. (R. 10.) The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925.

QUESTION PRESENTED

Whether bars, brackets, and fittings for use as replacement parts of automobile bumpers, manufactured and sold by petitioner, were taxable as au-

tomobile "parts" or "accessories" within the meaning of Section 900 (3) of the Revenue Act of 1921.

STATUTE AND REGULATIONS INVOLVED

The applicable statute and regulations of the Commissioner of Internal Revenue are quoted on pp. 2–6 of the Government's brief in opposition in *Bassick Manufacturing Company* v. *United States*, No. 350, which will be submitted at the same time as the present case.

STATEMENT

Petitioner brought suit in the Court of Claims for the recovery of excise taxes in the sum of $32,040.86, plus interest thereon, assessed against it with respect to the manufacture and sale of bars, brackets, and fittings for use as replacement parts of automobile bumpers, for the period between November 1, 1922, and July 2, 1924. (R. 3, 5, 7.)

In deciding against the petitioner the Court of Claims found the following facts (R. 8–9):

Petitioner, during the period in question, was engaged in the manufacture, sale, and distribution of bumpers for automobiles, and bars, brackets, and fittings for use as replacement parts of such bumpers. Said articles were especially designed, manufactured, and sold for use on or in connection with automobiles and are not adapted for any other purpose or use.

ARGUMENT

The Court of Claims found that the articles taxed were "especially designed, manufactured, and sold

for use on or in connection with automobiles, and are not adapted for any other purpose or use." (R. 8.)

Petitioner contends, however, that while complete bumper assemblies are taxable under the statute, replacement parts for such bumpers are not "parts" or "accessories" for automobiles and are therefore not taxable. The answer to such a contention is well expressed in the language of Mr. Justice McKenna in *Worth Bros. Co.* v. *Lederer,* 251 U. S. 507, 509, quoted in our brief in opposition in *F. W. Stewart Manufacturing Corporation* v. *United States,* No. 351, October Term, 1929.

CONCLUSION

No question of general importance is presented by this case. The tax on automobile parts and accessories was repealed in 1926. The judgment of the court below was correct and the petition for certiorari should be denied.

Respectfully submitted.

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